



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
~~DELOACH~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable R.L. Wilson, Member
Texas Board of Pharmacy
Huntsville, Texas

Dear Sir:

Opinion No. 0-3577

Re: (1) Whether the Texas Board of Pharmacy may refuse to issue a reciprocity license to an applicant licensed in another State on grounds of moral character. (2) Whether the Board may call an applicant who seeks a license by reciprocity before it for examination as to character, ethics and past experience.

We have given careful consideration to the above questions upon which you have requested our opinion. These questions involve a construction of Section 9 of 4542a, Vernon's Annotated Civil Statutes, known as the Texas Pharmacy Law. We quote said Section 9 and underscore those provisions which relate directly to the questions under consideration:

"Sec. 9. Every applicant for license as a registered Pharmacist shall be not less than twenty-one years of age, of good moral character, and a graduate of a school or college of pharmacy recognized by the Board. Such applicant, in addition to the time required to graduate from school or college of pharmacy and exclusive of the portion of the year spent in attendance at school or college, shall have had at least one year of practical experience in retail pharmacy under the direct supervision of a registered pharmacist, which experience shall be principally work directly related to selling drugs and poisons, compounding of pharmaceutical preparations and physicians' prescriptions, and keeping of records and making reports required under the State and Federal statutes; and to obtain a license shall pass a theoretical and practical examination satisfactory to the Board of pharmacy. Provided that the Board may at its discretion grant license as pharmacist to persons who

furnish proof that they have been registered as such in some other State, and that they are of good moral character, provided such other State in its examination required the same general degree of fitness required by this State and grants the same reciprocal privileges to pharmacists of this State; and provided that exemption from the graduate in pharmacy requirement for entrance to examination for registration as pharmacist shall be allowed to persons who before this Act becomes effective have been employed for at least six months in a retail pharmacy under the supervision of a registered pharmacist, and who register with the Board for such examination within one year after this Act becomes effective and who, within not more than five years from date on which this Act becomes effective, produce satisfactory evidence to the Board of Pharmacy of having had four years of pharmaceutical training under the supervision of a registered pharmacist and shall successfully pass the examination required by the Board of Pharmacy." (Underscoring ours).

The validity of the Texas Pharmacy Law as a regulation of the profession of pharmacy in the interest of the public health cannot be questioned. 21 Tex. Jur., 511; Hanzal v. City of San Antonio, 221 S.W. 237. The good moral character of those practicing pharmacy is as vital to the safety of the public as is their training and experience. The Legislature may properly make character as well as training a prerequisite to a license. 33 American Jurisprudence 372; McDonough v. Goodcell, 13 Cal. (2d) 741, 91 P. (2d) 1035, 123 A. L. R. 1205. The discretion and duty to pass upon the moral fitness of applicants may be conferred by the Legislature upon the administrative board or agency charged with granting the licenses. 48 Corpus Juris 1090.

We have been unable to find any Texas cases passing upon the precise questions submitted, but we refer to two cases from other States which by analogy are applicable. The Supreme Court of Oklahoma In Re Mosher, 24 Okla. 61, 102 P. 705, held that a reciprocity provision in the Oklahoma Constitution as to licensing attorneys did not preclude inquiry into the moral qualifications of applicants from other States. Fernel v. State Board of Medical Examiners, 267 Pac. 561, by the California Court of Appeals holds that an applicant for a reciprocity certificate to practice medicine must satisfy the board of his good moral character, under the provisions of the Medical Practice Act of California. We quote from the courts opinion in that case:

"If it be required that one shall show reasonable evidence that he is an ordinarily decent fellow before he shall have the privilege of submitting himself to the examination provided before he may emerge from the status of a student to that of a licensed practitioner in our state, what reason could be advanced to excuse this showing in a recent comer in our midst, whose history is unknown to us, and who may have found it convenient to seek pastures new for reasons not comfortable to disclose?"

The underscored portion of Section 9 of the Act quoted above, manifests, in our opinion, a clear intention on the part of the Legislature to make proof of good moral character of the applicant to the board's satisfaction a prerequisite to the granting of a license to one who was previously licensed in another State. If the board acts arbitrarily and without justification in this regard, the applicant may have his remedy in the courts.

We likewise believe that it would be within the authority and discretion of the State Board of Pharmacy to require applicants for licenses as pharmacists, whether by examination or reciprocity, to appear before it in order that it may make personal examination of the applicant as to his moral character, ethics, experience, etc. Section 4 of Article 4542a provides in part:

"* * *. The Board shall have the power to make by-laws and regulations, not inconsistent with the law, for the proper performance of its duties * * *."

Requiring the personal appearance of applicants before the board would, we believe, come within the scope of discretion as to the manner of discharging its duties which has been delegated to the board by the Legislature. As stated at 27 Texas Jurisprudence 888:

"In conferring power to license and prescribing rules under which the power is to be exercised, a law-making body does not delegate a legislative function, but an administrative or quasi-judicial one, even though considerable latitude is given the licensing official in exercising such power."

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Walter R. Koch
Walter R. Koch
Assistant

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APPROVED JUN 9, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman